IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1176 of 2004

with

SPECIAL CRIMINAL APPLICATION No. 1225 of 2004

with

SPECIAL CRIMINAL APPLICATION No. 1292 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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A.K.CHAUDHARY & 2 - Applicant(s)

Versus

THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR K.T.S.TULSI, Sr.Counsel with Mr.Nanavati, Sr.Counsel for

NANAVATI & NANAVATI for Petitioner No(s).: 1,2.

MR NITIN M AMIN for Petitioner in Spl. Cr. Appln. No.1292/2004

MR KOGJE, Ld. APP for Respondent No(s).: 1.

RULE SERVED for Respondent No(s).: 2, 3,5.

MR PRAKASH K JANI for Respondent No(s).: 4.

MR BHAIRAVIA for Resp. (Ori. Complainant) in Spl. Cr. Appln. No.1292/2004

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 09/09/2005

COMMON CAV JUDGMENT

1.Life is dear to everybody and death is painful to one and all. Should sentiments prevail or discipline for the administration of any institution ? Can sentiments be allowed to be enforced over rule of law ? Can the action or inaction or propriety of action or inaction to discharge legal obligation be said as an aid or instigation or abetment to commit suicide ? The aforesaid are the aspects which directly or indirectly arise for the consideration of this Court in the present group of petitions.

2.The short facts of the case are as under:

(i) There is no dispute on the following aspects:

a)Life Insurance Corporation of India (hereinafter referred to as “LIC” for short) is a statutory body governed by the provisions of LIC Act and its employees are governed by the Regulations framed by LIC in exercise of the statutory power under LIC Act.

b)The deceased Dineshbhai Ganpatbhai Parmar was an employee of LIC holding of the cadre of Assistant Executive Engineer.

c)The petitioners of Special Criminal Application No.1176/2004, Shri A.K.Chaudhari and Shri A.K. Shukla and the petitioners of Special Criminal Application No.1225/2004, Shri S. Roy Chaudhary, Shri R.K. Mishra, Shri T.K. Banerjee, and Shri P.P. Upadhyay were and are the Officers of LIC, In-charge of their concerned Departments, holding different capacities, which are as under:

1.Shri S. Roy Chowdhury, Executive Director (Personnel) – Petitioner No.1 in Special Criminal Application No.1225 of 2004.

2.Shri A.K. Shukla, now Executive Director (Pr

& C C) at the relevant time was working Chief (Personnel) – Petitioner No.2 in Special Criminal Application No.1176 of 2004.

3. Shri R.K. Mishra, now in Central Office as Superintending Engineer, the then Executive Engineer, Ahmedabad Divisional Office – Petitioner No.2 in Special Criminal Application No.1225/2004.

4. Shri T.K.Banerjee, Zonal Manager, Western Zone, Mumbai, now Member, IRDA (Insurance Regulatory and Development Authority), Hyderabad – Petitioner No.3 in Special Criminal Application No.1225 of 2004

5. Shri A.K.Chaudhary, the then Senior Divisional Manager, Rajkot, now on deputation in the Office of Ombudsman, at Ahmedabad – Petitioner No.1 in Special Criminal Application No.1176 of 2004.

6. Shri P.B.Upadhyay, now Faulty Member, Divisional Training Centre, Rajkot, the then Manager (I.T.) - Petitioner No.4 in Special

Criminal Application No.1225/2004.

All shall be referred to hereinafter as “the specified authority/specified officer” for the sake of convenience.

(d)The petitioner of Special Criminal Application No.1292 of 2004 was the contractor who was granted contract by LIC for construction of certain works of LIC with one M/s.Vijay Construction.

(e)One of the contractors, who is the petitioner of Special Criminal Application No.1292 of 2004 is also Dalit. The deceased D.G.Parmar (hereinafter referred to as “the deceased”) was also Dalit.

(f)In the year 2000 contracts were granted by the deceased for repair of the official quarters of L.I.C., at Rajkot as an Officer of LIC in capacity as Assistant Executive Engineer to the petitioner of Special Criminal Application No.1292/2004 and one another contractor M/s.Vijay Construction (hereinafter referred to as “another contractor”).

(g)There was complaint by petitioners of Special Criminal Application No.1292 of 2004 against

deceased, lodged with Anti Corruption Bureau (ACB) for demanding bribe and a trap was organized by ACB, which was not successful and had failed, in the month of August, 2002. There were complaints lodged by the petitioners of Special Criminal Application No.1292 of 2004 and other contractor to the Authority of LIC, by making allegations against the deceased for demand of bribe and on the basis of such complaint the Specified Authority of LIC had passed the order on 24.9.2002 for suspending the deceased.

(h)There were no actions for about two years by the specified officers, though the deceased continued to make representations against the action of suspension.

(i)In April-June, 2004 explanation was called by LIC from the deceased in connection with the allegations made by the contractor against the deceased.

(j)On 14.7.2004, deceased replied to the Authority by submitting his explanation.

(k) The Vigilance Department of LIC also held an inquiry and had exonerated the deceased in the month of November, 2003. However, Specified Authority of LIC issued charge-sheet to the deceased on 6.10.2004.

(l) On 19.10.2004, the deceased made a demand for supply of certain documents.

(m)In the meantime, the National Commission for Scheduled Caste and Scheduled Tribes recommended for taking appropriate action for ventilating the grievance of the deceased.

(n)As per the specified officers LIC as there were serious allegations of demanding bribe, the action is taken by the Specified Authority in discharge of official duty provided under LIC Act read with Staff Regulations framed thereunder. Whereas as per the deceased, the action is taken by arranging conspiracy of the Bengali Officers in collusion with the aforesaid two contractors.

(o)On 23.10.2004 in the suicide note the ending words of the deceased were (English Translation):

“What a distress in man's life. There is the only safety method to trap and make a man helpless by playing fault and tricks and there is nobody to ask them. They were misusing the powers to spoil the lives of others, has humanity died ? There is one aforesaid inquiry panel to damage my career/life, by collusion of each other a wrong shape is given to the matter and the same is made colourful and I am tortured mentally for two years and I am made helpless for which the following persons are fully responsible. Hence, they shall be held deeply responsible in the eyes of law and shall be punished so that they may think oblique otherwise before doing such things to others:

(i)Shri Mavji Dahyabhai Vania -Rajkot

(ii)Shri K.C. Ajari – Rajkot

(iii)Shri A.K.Chaudhary – Ahmedabad (Bengali)

(iv)Shri A.K.Shukla – Mumbai

(v)Shri P.B. Upadhyay – Rajkot

(vi)Shri R.K. Mishra – Mumbai (Bengali)

(vii)Shri Roy Chowdhury – Executive Director (Personnel) – Mumbai (Bengali)

Now, we are fed up with our life and we have no option other than leaving the world. The charmless life has become dissolved, dried, without any interest and isolated and, therefore, helplessly we have to commit suicide. This distress and charmless lives will lie peacefully.

Whatever our rightful dues are there – financial and others shall be received by my father/brothers.

– Good Bye"

(p) The deceased committed suicide with his wife and two daughters. His wife Madhuben B Parmar, daughter Payal D. Kapadia and Nisha D. Kapadia by consuming poison. For two days as the house remained closed, it was inquired and dead bodies were found of the deceased and the aforesaid three persons in the house.

(q)On 27.10.2004 FIR was registered vide C.R.

No.498/2004 of Sabarmati Police Station, Ahemdabad by showing the occurrence of the incidents of two years before on 26.10.2004 and from 23.10.2004 to 27.10.2004, for the offences under Section 306, 114 of IPC read with Section 3, 1, 6,8, 10 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the Atrocities Act” for short) and the complainant is the brother of the deceased, Shri Kantibhai Sanjibhai Parmar.

3. In light of the aforesaid undisputed factual scenario, the matter deserves to be examined.

4. Mr.Tulsi, learned Senior Counsel appearing with Mr.Nanavati, learned Counsel for the petitioners submitted that even if the complaint is accepted on its face value, it does not make out a case for commission of the alleged offences namely; abetment for suicide and the alleged offence under the Atrocities Act and the submission of the learned Counsel appearing for the petitioners is that the action was taken of suspending the deceased, of issuing charge-sheet etc., etc., in

discharge of the official duty or, in any case, in purported exercise of the official duty. It was also submitted that had the petitioners in capacity as the Specified Officers of LIC not taken action in such a serious matter, where the allegations were for demand of bribe in a complaint made by the contractor, there would have been ex-facie dereliction of the duty and if the actions were not taken, the petitioners themselves could have been subjected to the departmental proceedings for dereliction of the duty. He also submitted that in none of the correspondences made by the deceased with LIC there is any allegation of so-called Bengali conspiracy and he alternatively submitted that even if there is such allegation, the same is the self-creation of the deceased himself on imagination and, in any case, even if such allegations stand, the same would not result into commission of offence as such allegations, at the most, can be said as harassment or mental torture or at best, cruelty which even otherwise cannot be said as abetment or incitement to commit suicide. He also submitted that as the deceased was suspended in the year 2002, he had enough time to think and not only

that but even after issuance of the charge-sheet on 6.10.2004, the deceased had demanded documents on 19.10.2004 and thereafter also there was sufficient time to think consciously and the alleged incident had happened on 23.10.2004 and, therefore, it cannot be said as abetment to suicide. The learned Counsel also submitted that even if the person is a Dalit, he is also not immune to law and, therefore, in any case, when the action is taken in discharge of the official duties or, in any case, in purported exercise of the official duty, it cannot be said that any alleged offence is committed under the Atrocities Act. The learned Counsel appearing for the petitioners has relied upon various decision to support his contention, which shall be referred to hereinafter to the extent they are found relevant, for the present case.

5. Mr.Tulsi, learned Sr. Counsel has also alternatively submitted that there is no jurisdiction with the police to investigate into the complaint as no offence is made out and he, therefore, submitted that merely because FIR is registered of a cognizable case is no ground for

the police to proceed with the investigation by effecting arrest etc., unless prima facie satisfaction is arrived at that cognizable offence is committed and, therefore, he submitted that as no offence is made out or, in any case, as there is no authority with the police to investigate into the present complaint, this Court may exercise the power for quashing of the complaint. He also submitted that the death, in any case, is un-natural death and the police could have inquired into the case of un-natural death. If there is sufficient material for abetment of suicide, then only the FIR can be registered under Section 306, but merely because there is a suicidal note in the present case, it is not sufficient to make out a case for commission of offence under Section 306 of the IPC for abetment of suicide or for the alleged offence under the Atrocities act.

6. It was further submitted by Mr.Tulsi that as per the exceptions provided under the Indian Penal Code under Chapter IV, proceedings with Section 76 onwards, nothing is an offence which is done by the person under a mistaken belief of fact or law

that he is bound by law to do it and, therefore, if general exceptions are considered, it is clear that no offence is committed by any of the accused under Section 306 of IPC or under the provisions of Atrocities Act, as alleged.

7. Mr.Amin, learned Counsel appearing for the petitioner contractor submitted that as the demand of bribe was made by the deceased, his client had approached the ACB, but somehow, as the information was leaked, the trap failed. He submitted that the petitioner had no option but to complain to the higher Officer of the LIC for the demand of illegal gratification made by the deceased. He submitted that merely because the complaint is filed by the petitioner against the alleged misconduct of the deceased, it cannot be said that there is any abetment to suicide. He, therefore, submitted that the petitioner is also a Dalit and, therefore, the charge under the Atrocities Act cannot be maintained against the petitioner. Mr.Amin for supporting his contention has also relied upon certain decisions to which the reference shall be made to the extent they are found relevant for the present case.

8. On behalf of the State and the Original Complainant, Mr.Kogje, learned APP, Mr.P.K.Jani, learned Counsel and Mr.Bairavia, learned Counsel appearing for the complainant in the respective petitions, inter alia, submitted that there is prima facie material for showing commission of offence for abetment to suicide and also for the alleged offence under Atrocities Act. It has been submitted on behalf of the respondents that in normal circumstances, as a responsible Officer of LIC, the suspension order could have been revoked and the representation made by the deceased could have been responded to by taking appropriate action. However, all omission were with the deliberate purpose of harassing the deceased who was Dalit and it has been submitted that the action of suspending and other departmental proceedings were coupled with the malice and, therefore, can be said as abetment to suicide. It was also submitted that the Atrocities act is enacted with a view to provide additional safe-guard to Dalit and if the purposive interpretation is made of the relevant provisions of Atrocities Act or of the allegations made in the complaint, it does make out a case prima facie for commission

of offence under the Atrocities Act.

9. It was also submitted on behalf of the State and original complainant that the matter is still at the investigation stage and the police has yet to investigate into the complaint. It was submitted on behalf of the respondents that when the FIR is registered in connection with the cognizable offence, it is obligatory on the part of the police to investigate and such investigation may also result into dereliction of the statutory duties by the accused petitioners. It was submitted on behalf of the respondents that the investigation by the police in connection with the present complaint cannot be said as without jurisdiction. It was submitted that the present complaint may not be quashed and all petitions deserve to be dismissed.

10. The learned APP, Mr.Kogje had additionally submitted that in the investigation made up till now by the police there are statements of the witnesses showing that there was harassment or bias by some of the Officers of LIC, who are petitioners against the deceased since he was

Dalit. He submitted that as the investigation is yet to be made further, the matter cannot be concluded at this stage on the basis that there is no offence committed by the accused for abetment of suicide or alleged offence under the Atrocities act. The learned APP submitted that considering the allegations made in the complaint it cannot be said that there is no prima facie case for investigation by police and, therefore, it was submitted that the complaint may not be quashed by this Court at this stage.

11. Mr.Jani, learned Counsel appearing for the original complainant – respondent herein also contended that as per Section 105 of the Evidence Act, the burden of proving that there is a case within the exception as provided under IPC falls upon the accused and in absence thereof the Court shall presume the absence of such situation of exceptions, and therefore such defence cannot be considered at the stage of investigation or quashing of the complaint under Section 482 of Cr.P.C.

REASONS

12. The first aspect which deserves to be examined is the scope and ambit of Section 306 of IPC for abetment of suicide and second would be for the scope and ambit of the alleged offence under the Atrocities Act. The third aspect would to maintain rule of law for alleged offences as against the sentiments. The fourth aspect would be to consider whether the allegations made in the complaint and the material available make out the commission of alleged offences. The fifth aspect would be the peculiar facts and circumstances of the case which deserves to be recorded and the sixth would be whether law has provided any remedial measure. The seventh and the last would be to pass final order in the present case.

13) In the decision of the Apex Court in case of **Netai Dutta vs. State of West Bengal, reported in 2005(2) SCC, 659**, an employee of a Company was transferred from one place to another and he did not join. Thereafter, he sent a letter of resignation expressing his grievance against stagnancy in salary and unpleasant situation and the Company accepted the resignation. Thereafter the said employee committed suicide and suicide

note was found alleging in the note that Netai Dutta and one Paramesh Chatterjee engaged him in several wrong doing, which was alleged as torture and the brother of the deceased filed complaint against Netai Dutta and others under Section 306 of IPC. The learned Single Judge of the High Court of Calcutta declined to quash the complaint. In appeal, however, the Apex Court in SLP, while quashing the complaint, at paragraphs 5 and 6 observed as under:

> *"5. There is absolutely no averment in the alleged suicide note that the present appellant had caused any harm to him or was in any way responsible for delay in paying salary to deceased Pranab Kumar Nag. It seems that the deceased was very much dissatisfied with the working conditions at the work place. But, it may also be noticed that the deceased after his transfer in 1999 had never joined the office at 160 B.L. Saha Road, Kolkata and had absented himself for a period of two years and that the suicide took place on 16.2.2001. It cannot be said that the present appellant had in any way instigated the deceased to commit suicide or he was responsible for the suicide*

of Pranab Kumar Nag. An offence under Section 306 IPC would stand only if there is an abetment for the commission of the crime. The parameters of the "abetment" have been stated in Section 107 of the Indian Penal Code. Section 107 says that a person abets the doing of a thing, who instigates any person to do that thing; or engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, or the person should have intentionally aided any act or illegal omission. The explanation to Section 107 says that any willful misrepresentation or willful concealment of a material fact which he is bound to disclose, may also come within the contours of "abetment". ***(Emphasis supplied)***

6.In the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incidence whereby the appellant herein is alleged to have committed any willful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the

act of suicide. There is no case that the appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide by deceased Pranab Kumar Nag."

The Apex Court thereafter at para 7, inter alia, observed that

"7. ... The prosecution initiated against the appellant would only result in sheer harassment to the appellant without any fruitful result. In our opinion, the learned Single Judge seriously erred in holding that the first information report against the appellant disclosed the elements of a cognizable offence. There was absolutely no ground to proceed against the appellant herein."

14. Thereafter, ultimately the exercise of the power under Section 482 of Cr. P.C., the criminal proceedings initiated against the appellant were quashed.

15. In case of **Sanju alias Sanjay Singh Sengar vs.**

State of MP, reported in 2002(5) SCC, 371, of course at the stage of quashing of the charge-sheet after referring to the earlier decision of the Apex Court in case of **Swamy Prahaladdas vs. State of M.P., reported in 1995 Supp (3) SCC, 438;** in case of **Mahendra Singh v. State of M.P., reported in 1995 Supp (3) SCC 731;** in case of **Ramesh Kumar v. State of Chhattisgarh, reported in 2001 (9) SCC, 618**, it has been further observed at para 12, inter alia, as under:

> *"12. ... Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea.* ***(Emphasis supplied)*** *It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have been told to the*

deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 drove the deceased to commit suicide." **(Emphasis supplied)**

The Apex Court, after taking into consideration the suicide note further observed at para 14 as under:

14. *A plain reading of the suicide note would clearly show that the deceased was in great stress and depressed.* ***(Emphasis supplied)*** *One plausible reason could be that the deceased was without any work or avocation and at the same time indulged in drinking as revealed from the statement of the wife Smt. Neelam Sengar. He was a frustrated man. Reading of the suicide note will clearly suggest that such a note is not a handy work of a man with sound mind and sense.* ***(Emphasis supplied)***

Smt. Neelam Sengar, wife of the deceased, made a statement under Section 161 Cr.P.C. Before the Investigation Officer. She stated that the deceased always indulged in drinking wine and was not doing any work. She also stated that on 26th July, 1998 her husband came to them in an inebriated condition and was abusing her and other members of the family. The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25th July, 1998 and if the deceased came back to the house again on 26th July, 1998, it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken pace on 25th July, 1998. ***(Emphasis supplied)*** *Viewed from the aforesaid circumstances independently, we are clearly of the view that the ingredients of 'abetment' are totally absent in the instant case for an offence under Section 306 I.P.C. It is in the statement of the wife that the deceased always remained in a drunkened condition. It is a common knowledge that excessive drinking leads one to debauchery. It clearly appeared, therefore, that the*

deceased was a victim of his own conduct unconnected with the quarrel that had ensued on 25th July, 1998 where the appellant is stated to have used abusive language. Taking the totality of materials on record and facts and circumstances of the case into consideration, it will lead to irresistible conclusion that it is the deceased and he alone, and none else, is responsible for his death." ***(Emphasis supplied)***

In case of **"Hans Raj vs. State of Haryana", reported in 2004(12) SCC, 618**, the Apex Court while considering the scope and ambit of Section 306 of IPC at para 13, inter alia, observed as under:

"13. One of the circumstances which has to be considered by the Court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman."

Thereafter, the Apex Court abstracted its relevant

observations made in case of **"RameshKumar Vs. State of Chhattisgarh, reported in 2001(9) SCC, 618**, more particularly at para 12 of the said decision wherein Apex Court had observed as under:

"12. This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date

of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to "all the other circumstances of the case". A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression "the other circumstances of the case" used in Section 113-A suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the

presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase "may presume" used in Section 113-A is defined in Section 4 of the Evidence Act, which says "Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it".

Thereafter at para 16, the Apex Court, inter alia, observed as under:

“16. ...All that was alleged in the FIR or even at the stage of investigation was that there were frequent quarrels between the husband and wife sometimes resulting in physical assault, on account of the husband being addicted to consumption of 'Bhang'. The other allegation that the appellant was aggrieved of the fact that his sister Naro was not being properly treated by Fateh Chand, PW-3, brother of the deceased, also appears to be untrue because there is nothing on record to show that there

was any disharmony in the marital life of his sister Naro. In fact, Fateh Chand, PW-3, her husband, himself stated on oath that he was living happily with his wife Naro, sister of the appellant. On such slender evidence therefore we are not persuaded to invoke the presumption under Section 113-A of the Indian Evidence Act to find the appellant guilty of the offence under Section 306 I.P.C."

16.The Division Bench of this Court in the case of **"State of Gujarat vs. Sunilkumar Kanaiyalal Jani", reported in 1996(2) GLR, 797**, after taking into consideration the decision of the Apex Court in the case of **"Chanchal Kumari v. Union Territory, Chandigarh, reported in AIR 1986 SC, 752**, and after abstracting the relevant observations of the Apex Court in case of **"Sharad Birdhichand Sarda v. State of Maharashtra, reported in 1984(4) SCC, 116** regarding the psychological aspects of the suicide, further observed at para 8 in the said decision, inter alia, as under:

"8.If the evidence is viewed keeping such law in mind, we do not see any person to accept the

contention advanced on behalf of the State and upset the finding of the lower Court. Simply someone comes before the Court and says that both the spouses were often quarreling is not sufficient because that would not clearly establish the knowledge or intention relation to the crime and proximate assistance. There may be difference of opinions. If on one or another issue the spouses are often quarreling it is the usual wear and tear of the married life, and certainly that would not lead any one to end his/her life. One would bring end of his/her life if he/she is put to the compelling or alarming circumstances with no opinion. The prosecution has, therefore, to show what was the apple of discord so as to determine about abetment. The case in general terms is not sufficient. ***(Emphasis supplied)*** *Here in this case, it is not made clear as to what was the subject of quarrels on the day of the incident, what was the issue, who initiated the quarrel, in what context both were quarreling , and who was at fault for the quarrel. With regard to the past quarrels also it is ambiguously and in general terms alleged and stated that both were often quarreling, but it is not made clear in*

what context, and who was at fault? The party at fault if ultimately facing frustration of his/her plan goes to the extreme, i.e. Suicide the opposite party cannot be blamed and held liable. In different words, if extremity is one's own creation, and the opponent is blamed, it would amount to roguery supplants justice. ***(Emphasis supplied)*** *Nothing can be inferred or assumed for or against the party or the Court cannot jump to the conclusion that husband is always at fault, and wife is the victim of the wickedness of the husband. As made clear by the Calcutta High Court in the case of Niharbala Banerjee (supra), there is also no evidence about the knowledge and intention relating to the crime and proximate assistance. It is pertinent to note that the Calcutta High Court has held to which we agree that merely on the fact that the husband was not treating the wife properly and was treating her with cruelty will not be sufficient to establish the abetment.* ***(Emphasis supplied)*** *In this case, even if on the basis of the evidence of the above referred witnesses it is assumed that respondent was often quarreling with the deceased, that will not amount to abetment for*

committing suicide; it might be owing to above quoted psychological factors and symptoms taking shape independent of abetment. ***(Emphasis supplied)***"

17. In view of the above, it appears that the ingredients for abetment for suicide would be satisfied only if the suicide is committed by the deceased due to direct and alarming encouragement/incitement by the accused leaving no option but to commit suicide. Further, as the action of committing suicide is also on account of great disturbance to the psychological imbalance of the deceased such incitement can be divided into two broad categories, one normally where the deceased is having sentimental tie or physical relations with the accused and second category would be where the deceased is having relations with the accused in official capacity. In case of former category some times a normal quarrel or the utterance of hot exchange of words may result into psychological immediate imbalance. Consequently creating situation of depression, loss of charm in the life and if the person is unable to control sentiments of expectations, it may give

temptations to the person to commit suicide, e.g., when there is relation of husband and wife, mother and son, brother and sister, sister and sister and other relations of such type, where sentimental tie is by blood or due to physical relations. In case of second category the tie is on account of official relations, where the expectations would to discharge the obligation as provided for such duty in law and to receive the considerations as provided in law. In normal circumstances, relationships by sentimental tie cannot be equated with the official relationship and the reason being the different conduct of the parties for maintenance of the relations. The former category leaves more expectations, whereas in the latter category, by and large, expectations and obligations are prescribed by law, rules and regulations. Of course, for meeting with the requirement for ingredients of abetment to suicide, the provisions of the IPC are the same, but for the purpose of examination on the aspects of abetment to commit suicide or incitement/encouragement to suicide, it may have some relevance. Since, in the present case this Court is not concerned with the matter of matter

of abetment to suicide where the deceased or the accused had the relations covered in the first category, no further discussion may be required in this regard to that extent. However, in case where the allegations for abetment of suicide committed by the deceased falling in second category are concerned, the strict interpretation is called for, otherwise it may result into damaging the discipline of any institution or organization or department, which may consequently result into creating a situation against national interest for which the expectation would be the strict discipline and the rule of law only and nothing else.

18. Further in any governmental or semi-governmental organization the administration has to be as per the provisions of law, rules and regulations made for such purpose. It is an admitted position that LIC is a statutory Corporation of Government of India. The service conditions of staff, its employees are governed by the staff regulations, including the manner and method of working by the concerned employee, may be lowest in the rank or the top most officer. If

any person who is affected by functioning of any officer of L.I.C., such person can file complaint against such officer and may also pray for taking action against erring officer or against officer who allegedly has committed misconduct. As per the law, rules and regulations wherever the departmental action is required to be taken, the same must be taken keeping in view the peculiar facts and circumstances of the case and the substance of the allegations made against the officer concerned. The departmental action from the stage of preliminary inquiry till the final outcome of departmental proceedings and also appeal therein, which are contemplated in the rules and regulations are expected to be taken if the case is made out to the satisfaction of the Specified Officer for such purpose. While taking action, the satisfaction of the officer who is authorized for such purpose is to be seen and not the satisfaction of the officer against whom the action is to be taken. It is all possible that any departmental action taken may not be liked or accepted by the delinquent officer. However, the specified officer who is authorized for such purpose has to act in the manner provided in the

relevant rules and regulations and he cannot be expected to function or discharge his duty as per the liking or disliking of the delinquent officer and such Specified Officer who is authorized is to be guided by the law, rules and regulations only to the best of his ability and nothing else. If the actions are not taken against the delinquent officer it may some times result into creating a situation where the specified officer himself may be charged with the dereliction of duty but in addition that to, the important aspects which deserves to be recorded is that it may result into damaging the maintenance of the discipline in any organization, may be statutory, governmental or semi-governmental. If the departmental action is not liked by the delinquent officer it is difficult to visualize the situation which may be conceived on account of displeasure by such delinquent officer. It is all possible that such departmental action may be opposed by the delinquent officer and consequentially he may resort to making representations for withdrawal of the departmental action against him and if such efforts are not materialized either he may face the departmental proceedings or he may challenge

the departmental action against him in a Court of law or before appropriate forum, whose decision is to bind both the parties to the proceedings. Resorting to the modes provided for ventilating the grievance, including for approaching before the appropriate higher forum or Court of law are on the contrary subserving to the maintenance of the discipline. But any other method or mode which is not provided under the law, if resorted to and are entertained, may not only substantially damage the maintenance of the discipline, but it may some times ruin the discipline. The action of suicide itself is prohibited by law and that is the reason why its abetment is also punishable in law. If the departmental action or the implementation of law, rules and regulations is to only depend upon the sentimental reaction of the delinquent officer in the event such action is taken, then in that case the enforcement of law, rules and regulations would be impossible. Any delinquent officer against whom the departmental action is to be taken may create such impossibility of enforcing the law, rules and regulations by giving threat of putting end to his life or may actually put an end to his life some

times, but if in such circumstances the Specified Officer, who has taken departmental action, is to face with serious charge of abetment to suicide, it may result into developing a mentality amongst the Specified Officers not to discharge duty or to discharge duty as per the sentiments of such delinquent officer and the consequences of both would be not only to damage and spoil the position in any institution, but may frustrate the enforcement of law, rules and regulations and all such things would be against the interest of the society as a whole which is to be ruled by law. Therefore, it is reasonable to hold that between the duty and the sentiments, only duty should be allowed to prevail, which may consequently create the maintenance of the discipline and the rule of law.

19. Even as per the Indian Penal Code (hereinafter referred to as “the Code” for short), more particularly Sections 76, 79 and 80, which are reproduced hereinafter, provide that nothing is offence if done by any person who has committed any action by mistake of fact or by mistake of law in good faith, believing that he is bound by law

to do it.

> *76.* ***Act done by a person bound, or by mistake of fact believing himself bound, by law.****- Nothing is an offence which is done by a person who is, or who by reason of a mkistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.*
>
> *79.* ***Act done by a person justified, or by mistake of fact believing himself justified, by law.****- Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doping it.*
>
> *80.* ***Accident in doing a lawful act,*** *- Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution."*

20. Sections 76 and 79 provide that nothing is an offence if an action is taken by any person, who

has taken action believing that he is justified in taking action by law. Section 80 of the Code provides that nothing is an offence if it is done by accident of misfortune and without any criminal intention or knowledge in doing a lawful act in a lawful manner by lawful actions and with proper care and caution. Therefore, the general exceptions provided under Chapter IV of the Code makes it clear that the intention of the legislature to keep such actions which are provided in the category of general exceptions, out of the sweep of various offences which are made as punishable under IPC.

21. The law is enacted by any legislature taking the basis of a normal prudent conduct or reaction of a human mind, more particularly for tracing the element of criminality. The aspect which may be relevant for such purpose would be the normal reaction by the person having official relations. If any complaint is filed against any employee with allegation of misconduct and/or if the order of suspension is passed against any employee, his reaction normally would not be to commit suicide. Similarly, if the grievance is against misconduct,

one may file complaint and/or if complaint is received of serious misconduct against any employee, the higher officer normally can be expected to take Departmental action. The things, which are otherwise than normal, would be contrary on account of abnormal circumstances. If on account of any abnormal reaction, the employee has committed suicide, the conduct of the complainant or of higher officer of taking departmental action by way of resorting to legal remedy or enforcement of law, cannot be termed as leaving no option to the delequent employee but to commit suicide and, therefore, cannot be said as abetment or incitement to suicide under such circumstances. In any case any action for resorting to legal remedy for grievances or for enforcement of law in exercise of powers or purported exercise of power, cannot be said to contain any element criminality unless such action is ex facie without any competence, authority or jurisdiction. Reference may be made to the decision of the Apex Court in case of “Raj Kapoor vs. Lakshman”, reported at 1980(2) SCC, 175, more particularly the observations made at para 7 and 9 of the said decision and also the recent decision of the Apex

Court in case of **"Jacob Mathew v. State of Punjab", reported at AIR 2005 SCW, p. 3685**, for requirement of criminality while prosecuting the Doctor for offences under Section 304A of IPC.

22. The allegation is that the deceased made representations which were not responded for revocation of the suspension order. The explanation of the deceased was demanded, which was submitted by the deceased and the charge-sheet was served. The deceased thereafter demanded certain documents on 19.10.2004 and after three (3) days i.e. On 23.10.2004 the deceased has committed suicide along his wife and two daughters. If the auction of suspension is taken and thereafter if the said suspension order is not revoked, may be after recommendation by the Vigilance Commission or may be after the recommendation by the commission for Minority or may be after making representations by the deceased and if the charge-sheet is served contemplating to hold the departmental inquiry as per the Staff Regulations, may be either in discharge of the duty or in purported exercise of the duty or even if it is due to the alleged

conspiracy, the normal conduct of the delinquent employee would be to approach Court of law for seeking justice, but such cannot be said as creating a situation leaving no option to the delinquent employee, but to commit suicide. As observed earlier in a matter where the relationship between the accused and the victim are in official capacity, unless there is direct action by the accused leaving victim with no option but to commit suicide, it cannot be said that there is any abetment to commit suicide. There is no overtact whatsoever even as per the complaint or the suicidal note, which resulted into the commission of suicide. When the deceased committed suicide with his family members none was present, except all deceased and the suicide is committed by consuming poison. In absence of any direct and cogent action by any of the accused, who are petitioners herein at the time when the accused committed suicide, it cannot be said that there was any abetment on the part of any of the petitioner to commit suicide by the deceased. Therefore, the basic ingredients for making out the case for commission of offence of abetment to suicide is not made out even if the complaint and

the suicidal note are taken on its face value.

23. The aforesaid is in addition to the above referred provisions of IPC providing general exceptions to the extent that the action of filing complaint by the contractor against the deceased, the action of suspension, the inaction for revocation of suspension, after representation made by the deceased or recommendations by the Vigilance Commission or after the recommendations by the Commission for Minorities or the action of issuing charge-sheet for contemplating to hold departmental inquiry, cannot be said as not falling under any categories of general exceptions as provided under Sections 76, 79 and 80. Even if the allegations of conspiracy is considered, the same is for harassment and is not for leaving the deceased with no option but to commit suicide and, therefore, the action of suicide can be said as misfortune which may, in any case, fall under the exceptions provided in Section 80 of the Code.

24. The aforesaid takes me to examine the scope and ambit of alleged offences under Atrocities Act, more particularly Section 3(1)(i), (vi), (viii)

and (x) of the said Act. Section 3 (1)(i), (vi), (viii) and (x) reads as under:

(i)forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;

(ii)x x x

(iii)x x x

(iv)x x x

(v)x x x

(vi) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do “begar” or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(vii)x x x

(viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(ix)x x x

(x) intentionally insults or intimidates with intent to humiliate a member of Scheduled Caste or a Scheduled Tribe in any place within public view.

25. The perusal of Section 3(i) and (iv) shows that if there is any compulsion or incitement made to a Member of Scheduled Caste or Scheduled Tribe to do a begging or other similar forms and forced and bonded labour other than any compulsory services for public service given by the Government, the same is an offence.

26. As per Section 3(1) (viii), if there is institution of any false, malice or vexatious to criminal or other legal proceedings against the Member of Scheduled Caste or Scheduled Tribe, the same is an offence.

27. On true and correct interpretation of Section 3(i) and (viii) of the Atrocities Act, it transpires that there must be the declaration by the competent forum that the institution of suit or criminal or other legal proceedings against the Member of Scheduled Caste or Scheduled Tribe is either false or malice or vexatious. If the filing of suit or criminal or other legal proceedings against a Member of Scheduled Caste or Scheduled Tribe is treated as an offence on the ground that such Member of Scheduled Caste or

Scheduled Tribe against whom the proceedings are filed considers as false or malice or vexatious, it would mean that no proceedings whatsoever can be filed by any person against the Member of Scheduled Caste or Scheduled Tribe, and such cannot be the intention of the legislature for treating the action as offence. Therefore, it would be reasonable to hold that such proceedings may be of suit or criminal or other legal proceedings should have been declared by the competent forum before whom the proceedings are initiated as false or malice or vexatious. Only thereafter the person who has instituted such proceedings can be charged with the offence under Section 3(1) (viii) of Atrocities Act.

28. The reference may be made to the decision of the Division Bench of M.P. High Court in case of **"Abdul Rasheed Siddiqui and Anr. v. State of M.P. and Ors.", reported in AIR 1995 (MP), 138**, wherein at para 5 it was observed as under:

"5. The provisions of the Act, in particular of Section 3(I)(viii), are intended to protect persons belonging to Scheduled Castes or

Scheduled Tribes from harassment by false, malicious or vexatious litigation. An offence can be registered only after the Court dealing with the suit or criminal or other proceedings which is alleged to be false, malicious or vexatious is disposed of. Registration of case during the pendency of such a proceedings would amount to pre-judging the issue which the civil or criminal court in such proceeding may be called upon to decide. Prosecution of a plaintiff or a petitioner or a complainant would naturally have a tendency of preventing people from approaching Court of law for redressal of grievances. If a private individual tries to prevent any person from approaching a Court of law, that may,depending on the circumstances of the case, amount to contempt of Court. We are, therefore, satisfied that the legislative intent in enacting Section 3(1)(viii) of the Act is not to enable registration of a crime on a mere filing of a suit or criminal or other proceeding against a member of a scheduled caste or scheduled tribe and without waiting for the disposal of the suit or such other proceedings. If the suit or the other

proceeding is decided against the persons belonging to scheduled caste or scheduled tribe, certainly there is no offence committed. Even if proceeding is dismissed, it would be possible for the person who file the proceedings to contend that the proceeding was not either false or malicious or vexatious. A case cannot be registered merely on the basis of filing of a suit or criminal or other legal proceedings. Whether an offence has been committed or not can be decided only after the suit or proceeding is over."

29. Mr.Tulsi, learned Counsel appearing for the petitioners also attempted to submit that the disciplinary proceedings would not be included in the scope and ambit of Section 3(1)(viii) of the Atrocities Act, whereas Mr.Jani, learned Counsel appearing for the original complainant submitted that the interpretation may be made by this Court keeping in view the intention of the legislature to give special protection to the member of the scheduled caste and scheduled tribe and he also submitted that such proceeding may include departmental proceedings. In my view, it is not necessary for this Court to examine the said

aspect in view of the earlier observations that unless there a declaration by the competent forum in respect to the proceedings as false or malicious or vexatious, it cannot be said that any offence is committed. It appears that there would not be any intention on the part of the legislature to create a situation that no proceedings whatsoever can be initiated against a Member of Scheduled Caste and Scheduled Tribe, which as per the member of Scheduled Caste or a Scheduled Tribe may be false, or malicious or vexatious, since no citizen can be prevented from approaching the Court of law for filing suit or criminal prosecution or legal proceedings against any citizen, including against a member of Scheduled Caste or a Scheduled Tribe.

30. The perusal of Section 3 (1)(x) provides that if there is any intentional insult or intimidation with intent to humiliate a member of Scheduled Caste or a Scheduled Tribe in any place within public view, it is an offence. If the allegations made in the complaint and the facts and circumstances are examined in light of the observations made hereinabove, it appears that

even as per the suicidal note referred in the complaint, the departmental action of suspension was taken on account of the complaint made by the contractor against the deceased for demanding illegal gratification and as per the deceased, the contractor in collusion with the petitioners who are named as “Bengali Officers” conspired for taking action. As per the LIC, in the submission made by the learned Counsel for the petitioners, the action of suspension was taken after holding preliminary inquiry, whereas the case of the original complainant is that no preliminary inquiry is held.

31. If the allegations made in the complaint are examined in light of the observations made qua alleged offence under the Atrocities Act, there is no allegations worth the name for compelling the deceased to do begging or similar form of forces or bonded labour and, therefore, no offence is made out under Section 3(1) (i) of the Atrocities Act. The deceased has not approached to any Court of law for ventilating the grievance against the departmental action, nor there is any declaration by any competent forum that the initiation of

proceedings or departmental actions were false or malicious or vexatious and, therefore, the basic ingredients of Section 3(1) (i) and (viii) are not made out for showing the commission of offence. Even as per the complaint, the allegation made is of taking departmental action against the deceased by **Bengali Conspiracy.** It deserves to be recorded that the petitioner – contractor, who filed complaint in LIC against deceased is also a Dalit and at his instance the action is taken by the specified officers of LIC. Further, if the departmental action is taken against a member of Scheduled Caste or a Scheduled Tribe as per the Staff Regulation in a complaint, where there are serious allegations of demand of illegal gratification and such complaint is made by the contractor who himself is a Dalit, the same cannot be said as insult or intimidation with an intent to humiliate a member of Scheduled Caste or a Scheduled Tribe in any place within public view. Therefore, it cannot be said that any offence is made out as per Section 3(1)(x) of the Atrocities Act.

32. Mr.Jani, learned Counsel attempted to submit

that in view of certain observations made by this Court (Coram : D.N.Patel, J.) in the order dated 4.11.2004 in Criminal Misc. Application No.10273/2004, it may not be possible for this Court to take a different view that no offence is made out. It deserves to be recorded that it is true that the complaint is the same, but the application was made to this Court under Section 438 of the Code of Criminal Procedure for anticipatory bail by Shri A.K. Choudhry, one of the petitioners. As such, in view of the express provisions of Section 18 of the Atrocities Act, Section 438 of the Code of Criminal Procedure has no applicability when the accusation is made for the offence under the Atrocities Act.

33. Apart from the above, the scope of judicial scrutiny under Section 438 of Cr.P.C., at a stage of anticipatory bail by this Court would not be the same as while exercising power under Section 482 of Cr.P.C. It is true that at para 6 the observations are made in the said decision that “there is a prima facie case against the applicant.” The attention of this Court of binding the decision of the Apex Court regarding

the scope and ambit of the relevant provisions of abetment to suicide under IPC appears to have been not drawn. In any case, such observations made cannot be operated as a bar to this Court for taking the final view under Section 482 of Cr. P.C. As such the language of Section 482 of Cr.P.C., itself provides for not limiting or affecting the inherent powers of the High Court by the provisions of Cr. P.C., which would include Section 438 of Cr.P.C., for anticipatory bail. It may incidentally be mentioned that a statement was made at the bar that the against the order dated 4.11.2004 passed by this Court (Coram: D.N.Patel, J.) in Criminal Misc. Application No.10273/2004, SLP is preferred before the Apex Court and the same is pending.

34. Mr.Jani, learned Counsel appearing for the original complainant also submitted that in view of the observations made by this Court (Coram: Akil Kureshi, J.) in the interim application made being Criminal. Misc. Application No.10553/2004 in Special Criminal. Application No.1176/2004, in its order dated 16.11.2004 for quashing of the summons issued by the Police Officer, more

particularly at para 18 that prima face case for commission of offence is made out, it may also not be possible for this Court to take a different view. It deserves to be recorded that the matter was at the interim stage when the aforesaid order dated 16.11.2004 was passed by this Court, since the application itself was interim application.

35. Further at para 14 it was specifically observed as under:

> *"Since the main proceedings are pending and yet to be heard and fixed for hearing on 6.11.2004, any observations that I may in this order make shall be prima facie in nature and would be without prejudice to either side in their contention in the main proceedings. Therefore, when it is expressly made clear in the very order, no bar can be said to be operating in the power of this Court taking independent view at the time of final hearing of the case, as sought to be contended on behalf of the original complainant."*

36. The learned Counsel appearing for the petitioners as well as the respondent have made

eloberate arguments on the aspects of power of the police to investigate in a case where FIR is registered in cognizable offence. As such on the said aspect, the position of law is settled by the Apex Court in case of **"State of Haryana and Ors v. Ch. Bhajan Lal and Ors.", reported in AIR 1992 SC, 604**. In the said decision the Apex Court at para 108 has concluded as under:

> *"108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any previse, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

1. *Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

2. *Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R., do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

3. *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

4. *Where the allegations in the F.I.R., do not continue a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

5. *Where the allegations made in the F.I.R., or*

complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient round for proceeding against the accused.

6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*"

37. The aforesaid principles are followed in a number of cases by the Apex Court and by various High Courts of our country and, therefore, no detailed discussion may be required on the said aspect, except to follow the same principle. If the case

is examined in light of the concluding observations made by the Apex Court, which are reproduced hereinabove, and in view of the observations made by this Court in earlier paragraphs after taking into consideration the scope and ambit of the offences for which the accusation is made in the complaint, the present case is covered by the principles laid down by the Apex Court at Item No.1 namely that on the basis of the allegations made in F.I.R., or the complaint, no case is made out for commission of the alleged offences.

38.Further, in view of the observations made hereinabove that the F.I.R., and other material do not disclose a cognizable offence justifying the investigation by the police under Section 156(1) of the Code, it can be said that the present case would fall in Item No.2 of the principles laid down at para 108 of the above decision of the Apex Court.

39.The contention of Mr.Jani, learned Counsel for the respondent – Complainant that in view of Section 105 of the Indian Evidence Act, providing

burden upon the accused to prove that the case falls under the alleged exception under Sections 76, 79 or 80, the same cannot be considered by the Police while exercising power under Section 157(1) of Cr. P.C., nor by this Court, appears to be attractive, but on close scrutiny, considering the present facts and circumstances holds no water. If the facts alleged in the complaint does not refer to the case falling in the exceptional category, it may stand on different footing, but in a case where, even as per the allegations made in the complaint the action is in alleged purported exercise of the power or statutory duty, it is neither open to the police, nor to the Court to ignore the said aspect. As such, Section 105 of the Indian Evidence Act is to be considered at the stage of trial and, therefore, cannot be pressed in service at the stage when the police is to exercise the power of investigation or the Court is to consider the matter under Section 482 of Cr.P.C. In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching to the prima facie satisfaction of suspecting the commission of cognizable offence,

cannot ignore the general exception as provided under IPC as per Chapter IV of IPC. If, on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence. However, if the Police finds that the allegations made in the complaint on its face value, if taken, may not fall in the category of general exception, as provided under IPC, it may further investigate into the matter, and after the investigation, if the case is found to be not falling into general exceptions, the Police may further proceed for investigation by interrogation, etc. Therefore, there is no substance in the contention raised that while proceeding for investigation of a complaint in respect to cognizable offence, the general exceptions are not at all to be considered by the Police. If such a contention is accepted, it would result into treating all the actions as offence, though otherwise are out of the category of offence in view of the general exceptions provided under IPC and such would also result into nullifying the effect of provisions of IPC providing for general exceptions. Even at the

time of trial, merely because the accused is claiming his case in general exceptions, the prosecution is not discharged from the obligation of proving the case that the offence is committed. While filing charge-sheet the Police may be required to show in the investigation that the offence is committed in spite of the general exceptions and at that stage the burden would be upon the accused to prove that it was really or genuinely a case falling under general exceptions. The reference may be made to the decision of the Apex Court in case of **"State of U.P. v. Ramswaroop and Anr.", reported in 1974(4) SCC, 764**. Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very Chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact. If an action is ex facie beyond the jurisdiction or the action is in inherent lack of jurisdiction, it may stand on a different footing and at that stage possibly the question may arise for proof by the accused that he bonafide believed that he is having such power for such purpose. In the

present case there are no facts and circumstances concerning thereto and, therefore, no much discussion is required on the said aspect, leaving the question open, but it cannot be said that if the allegation made in the complaint makes out a case for general exception under Section 76, 79 and 80, the same cannot be considered by the Court or by the Police while proceedings for investigation in view of Section 105 of Indian Evidence Act and, therefore, the said contention of Mr.Jani cannot be accepted.

40.Mr.Jani, learned Counsel also attempted to submit that certain decisions of the Apex Court upon which the reliance is placed by the learned Counsel appearing for the petitioners for supporting the contention that no case is made out even if the allegations made in the complaint are accepted on its face value, may not be considered by this Court since the majority of the cases were at the stage after the charge-sheet is filed or at the time of trial. Merely because the observations are made or law is laid down by the Apex Court, at the time of considering the charge-sheet or at the time of trial, it cannot be said

that such decision cannot be said as a case law for examining the scope and ambit of the alleged offences. This Court while considering the scope and ambit of the alleged offence, is even otherwise also required to take into consideration the observations of the Apex Court, if made for such purpose. Therefore, the said attempt of Mr.Jani is of no help to the respondent – Complainant.

41.Therefore, merely because F.I.R., is registered of a cognizable offence, but if the allegations in the F.I.R., and other material do not constitute a cognizable offence, the same would not be sufficient ground for the police to proceed with the investigation, without there being any order of the Magistrate as per Section 155(2) of the Code. In view of the observations made by this Court that the allegations made in the F.I.R., even if they are taken on its face value and as the F.I.R., and other material do not constitute a case for commission of offence, it can be said that the police itself could not have proceeded with the investigation, without there being any order of the Magistrate, in view of the principles

laid down by the Apex Court in case of **"State of Haryana"** (supra). However, as some of the observations were made, of course, at the stage of anticipatory bail application and at the stage of interim application by this Court in the proceedings of Criminal Misc. Application No.10273/2004 and in Criminal Misc. Application No.10553/2004 in Special Criminal Application No.1176/2004, the action of the police at this stage of further investigation cannot be said as fully unjustified. In any event, in view of the observations made hereinabove that no case is made out for commission of offence for abetment to suicide and/or for offences under the Atrocities Act, no investigation by the police in connection with the FIR would be called for.

42. Mr.Jani, learned Counsel for the original complainant relied upon the decision of M.P. High Court in the case of **"Vijaykumar v. State of M.P.", reported in 2000(1) M.P. L.J., 52** and contended that in a case where the employee of the bank committed suicide due to tension of work in the advance cash branch given to him by his posting and when the Manager was prosecuted for

the offence under Section 306 for abetment to suicide, the High Court of M.P., had declined to quash the complaint under Section 482 of Cr.P.C. As such in the said case, it was observed by the M.P. High Court that prima facie case is made out and, therefore, the exercise of power under Section 482 of Cr.P.C., was declined. However, in view of the observations made hereinabove, it cannot be said that the ingredients for abetment to suicide are satisfied, the present case.

43. Further in view of the reasons recorded hereinabove, I find it proper to disagree with respect to the view expressed by M.P. High Court that if an employee of the Bank is asked to work in advance cash branch and such employee has committed suicide on account of the tension, the Manager who posted the employee in advance cash branch, can be said as having prima facie committed an offence for abetment to suicide.

44. Mr.Kogje, learned APP for the State relied upon the decision of Madras High Court in case of **"V. Padma Bai v. The Inspector of Police", reported in 1992(1) Crimes, 153**, and contended that if

suicidal note is left by the deceased, it prima facie indicates the commission of cognizable offence and it is the duty of the police to register a case on it and investigate the same. The perusal of the said decision of Madras High Court shows that there was matrimonial relationship of husband and wife. Further, the fact stated in the suicidal note as reproduced in para 4 was altogether different and cannot be equated with the present case. In any case, the decisions of the Apex Court which are referred to hereinabove showing the scope and ambit of the offence for abetment to suicide are not considered in the said decision by Madras High Court and, therefore, the said decision is of no help to the respondent State.

45. The aforesaid also takes me to examine the peculiar facts and circumstances of the present case. It is true that the deceased was the member of Scheduled Caste and Scheduled Tribe for whose upliftment various provisions are made in the Constitution of India and the laws are also enacted for extending special benefits and protection. However, subject to special

provisions under the Constitution or under the relevant statutory provisions all employees working under any organization, governmental or semi-governmental body or statutory bodies are to be treated equal in the matter of maintenance of discipline or for taking departmental proceedings or for enforcement of law, rules and regulations. In other words all employees are to be treated equal and no discrimination is permissible unless it is specifically authorized by law, rules or regulations.

46. The aforesaid is with a view to not only for enforcement of the law, but with a view to maintain the standard of integrity, efficiency and/or quality of work in any establishment, may be private, governmental or semi-governmental. All such qualities can be achieved if there is strict compliance to the rule of discipline in the said establishment.

47. The death of the deceased and his family is really an unfortunate incident, which may move the sentiments of any person. The death of a person by committing suicide in police custody or jail

may stand on different footing. Similarly, if the action is ex-facie lacking jurisdiction by the officer against the victim, it may also stand on different footing. But if the action is in purported exercise of the power or if not taken may result into charge of dereliction of duty, such action deserves to be protected against any criminal prosecution. The reference may be made to the recent decision of the Apex Court in case of **"S.K.Zutshi and Anr. vs. Bimal Debnath and Anr.", reported in 2004(8) SCC, 31** and also the recent decision of the Apex Court in case of **Jacob Mathew v. State of Punjab and Anr., reported at AIR 2005 SCW, p. 3685,** more particularly the observations made at para 30 and 31 for considering general interest of society in the matter of proseucting the Doctor under Section 304A of IPC. Therefore, though sentimentally on account of death of a member belonging to Scheduled Caste and his family one may receive sentiment to punish or to prosecute those who are named by the deceased in the suicidal note, but if such prosecutions are leniently viewed, it may result into creating the situation where no officer would be tempted to discharge his duty for

taking action for maintenance of discipline even if such is provided as per the regulations, on a fear or apprehension that the employee against whom the action is to be taken may put an end to his life by sentimentally reacting to such departmental action. It may equally leave room to the employee against whom the departmental action is to be taken by the higher officer, by giving threat of putting end to the life and thereby to create a fear in the mind of the higher officer and to create an atmosphere of no disciplinary action against such employee by such higher officer, though legally such higher officer is required to take action. As such, similar position may prevail even in any other situation where law is to be enforced by exercising the power. If such prosecutions are leniently viewed it may result into creating a situation of hampering the enforcement of law, rules and regulations, which has to prevail in all circumstances above all personal sentiments, otherwise it may seriously damage the maintenance of standard of efficiency, the expected quality of the work, maintenance of discipline in all organizations, may be private, government or semi-

government, and above all the general interest of the nation at large.

48.Even otherwise also, as observed earlier, it cannot be said that the ingredients of the abetment to suicide or for the offence under Atrocities Act are satisfied. Still, however, this Court finds it proper to record the peculiar facts and circumstances and the general interest of maintenance of discipline as against the personal sentiments of any person. Therefore, even if one may have sentimental sympathy on account of the death of a member of Scheduled Caste and Scheduled Tribe and his family members, such sympathy cannot be termed and treated as commission of offence for which the charge is made in the complaint.

49.Mr.Jani, learned Counsel for the Respondent – Compainant attempted to submit by relying upon the starting observation of the Apex Court in case of **State of Haryana (Supra)** that merely because some of the petitioners who are officers of LIC presently hold very high position is no ground to quash the complaint and he further submitted that

no one is above law and, therefore, the petitioner accused deserve to be prosecuted irrespective of their position.

50.There cannot be a dispute to the proposition that “no one is above law”, but at the same time if the Court on merits finds that no case is made out for commission of offence as per law, it would be improper either to decline the relief merely on the ground that any party to the proceeding is holding high position in the organization or to grant relief merely on the ground that either party to the proceeding is lower in rank. In the system of administration of justice as per Constitution of India and law, such aspects have no legs to stand. Suffice it to say that this Court has to uphold the rule of law irrespective of the position of either of the parties to the proceedings before it. Therefore, the said attempt of Mr.Jani cannot be entertained and deserves to be rejected at the outset only.

51.The aforesaid takes me to examine the aspects as to whether in such circumstances law provides for remedy or remedial measure or not ? As per the

complainant the deceased has put an end to life due to the departmental action of suspension and of inaction in revocation of suspension order and of issuing the charge-sheet and contemplating to hold departmental inquiry, whereas as per the accused officers the action is taken in discharge of the official duty and had the action not taken, the officers could have been charged with the derelictions of duty. Though in view of the observations made hereinabove, it may not amount to offence but the fact remains that there is a loss of life of the deceased, who was an employee of Life Insurance Corporation of India. The remedial measures under the Civil Law and Criminal Law are different. The different yardstick and the criteria prevails for commission of offence, prosecution and for imposing punishment upon a person when offence is committed but when even no offence is committed and in a case where the family members of the deceased are visited with the consequences to loss of life, it cannot be said that there is no remedy provided under the law. Under such circumstances, there is a remedy provided as per the Civil Law for compensating to the death of the deceased. The principles of

vicarious liability may also apply if ultimately it is proved that the loss of life is due to inaction by the specified officers of LIC and not due to abnormal sentimental reaction of the deceased to the departmental proceedings. As such, even for finding the aforesaid aspects, full fledged opportunity is required to be given to both the sides namely; the relatives of the deceased may prove that the loss of life is due to inaction or so-called purported exercise of the power and the officers and also LIC itself may prove their defence that the so-called action for suicide and the loss of life is due to abnormal psychological reaction by the deceased to the departmental proceedings. All such aspects, if ultimately proved to the extent that the loss of life of the deceased is on account of any negligence in discharge of duty by the officers concerned of LIC, the dependent members of the deceased may get appropriate compensation. Therefore, there is a remedial measure provided under Civil Law for compensating to the loss of life to the deceased to the dependent members of the deceased. Since there is neither prayer, nor all parties to the proceedings, more particularly

LIC is before the Court, I find it proper to leave the matter at that stage, leaving the parties to resort to appropriate remedy under Civil Law for compensation etc., due to loss of life to the deceased, as may be permissible in law.

52. In view of the aforesaid observations and discussions, I find it proper to pass final order to quash the impugned complaint vide C.R. No.I-498 of 2004 of Sabarmati Police Station hence ordered accordingly. All the petitions are allowed to the aforesaid extent. Rule made absolute accordingly.

9.9.2005 **(Jayant Patel, J.)**

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